NOT INCLUDED IN BOUND VOLUMES

PGB Lakeland, FL

## UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SCHWARZ PARTNERS PACKAGING, LLC D/B/A MAXPAK

Employer

and

Case 12-RC-073852

UNITED STEELWORKERS INTERNATIONAL UNION

Petitioner

## DECISION AND DIRECTION

The National Labor Relations Board has considered objections to an election held March 15, 2012 and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 39 for and 38 against the Petitioner, with 2 challenged ballots.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel. $^{3}$ 

 $^{2}$  In the absence of exceptions, we adopt pro forma the hearing

<sup>&</sup>lt;sup>1</sup> All dates herein are in 2012.

officer's recommendation to overrule the Union's challenges to the ballots of Richard Whiting and Abner Rivera.

<sup>&</sup>lt;sup>3</sup> The Employer argues that the recess appointments of Members Griffin and Block were not properly constituted and that the Board therefore lacks a quorum to act. For the reasons set

The Board has reviewed the record in light of the  $exceptions^4$  and briefs and has adopted the hearing officer's findings<sup>5</sup> and recommendations only to the extent consistent with this Decision.

For the reasons set forth in the hearing officer's report, we adopt his recommendations to sustain the Union's Objections 5 and 11.6 In so doing, we find that the evidence adduced in support of either objection, considered individually or cumulatively, would warrant setting aside the election.

forth in *Center for Social Change*, *Inc.*, 358 NLRB No. 24 (2012), we reject this argument.

<sup>&</sup>lt;sup>4</sup> In the absence of exceptions, we adopt pro forma the hearing officer's recommendations to overrule Union Objections 1, 3, 4, 6, 8, and 10, and the Employer's Objection. We further adopt the hearing officer's recommendation to approve the Union's withdrawal of Objections 2 and 9.

<sup>&</sup>lt;sup>5</sup> The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. Stretch-Tex Co., 118 NLRB 1359, 1361 (1957). We have carefully examined the record and find no basis for reversing the findings.

<sup>&</sup>lt;sup>6</sup> Having adopted the hearing officer's recommendations to sustain these objections, we find it unnecessary to pass on the hearing officer's further recommendation to sustain Objection 7. In addition, we do not rely on the hearing officer's citation to *PPG Aerospace Industries*, 355 NLRB 103 (2010), a two-member Board decision.

<sup>&</sup>lt;sup>7</sup> In adopting the hearing officer's recommendation to sustain Objection 5, we do not rely on his finding that Supervisor Greg Bryant engaged in objectionable conduct by predicting that the

With regard to Objection 11, we find no merit in the Employer's contention that Converting Superintendent Doug Stewart's comments regarding the Union, which the hearing officer found objectionable, occurred outside of the critical period. First, the hearing officer credited employee Sonja Phillips that, "a couple of days before the election," Stewart told her that he would have already discharged her if she were represented by the Union. We find no basis for overruling the hearing officer's decision to credit Phillips' testimony.

Next, the hearing officer credited testimony that Stewart told employees, during several mandatory meetings, that a union would make it easier for him to fire people. The hearing officer found, based on the record as a whole, that all of these meetings took place during the critical period. Indeed, all of the relevant exhibits refer to meetings being held from mid-February through March 15.

We are not persuaded by the Employer's arguments that

Stewart's first meeting with employees occurred on January 26,

before the Union filed its petition on February 6. The

Employer's January 26 letter to employees, on which it relies,

merely states that the Employer was aware of the union campaign;

the letter contains no indication that a meeting was held that

plant might close. There is insufficient evidence to establish that Bryant made this comment during the critical period.

day. The Employer also cites testimony from employee Donnie Robinson that the Employer held its first meeting on January 26. Contrary to the Employer, we find that Robinson's uncredited testimony is insufficient to overcome the hearing officer's well-supported finding that Stewart made his objectionable comments in meetings conducted during the critical period.<sup>8</sup>

## DIRECTION

It is directed that the Regional Director for Region 12 shall, within 14 days from the date of this Decision and Direction, open and count the ballots of employees Richard Whiting and Abner Rivera. The Regional Director shall then serve on the parties a revised tally of ballots, including the count of the ballots named above. If the revised tally shows that the Petitioner received a majority of the valid votes cast, the Regional Director is directed to issue a certification of representative. If the revised tally shows that the Petitioner did not receive a majority of the valid votes cast, the Regional Director shall set aside the election and order a new election, at such time as the Regional Director deems appropriate.

Dated, Washington, D.C., August 29, 2012.

<sup>&</sup>lt;sup>8</sup> In any event, the hearing officer appeared to credit testimony by employee Waldemar Ortiz that Stewart repeated the same statement during two or three weekly meetings. Even assuming that Stewart initially made the comment before the Union filed the petition, the record makes clear that subsequent iterations occurred during the critical period.

	Mark Gaston Pearce,	Chairman
	Richard F. Griffin, Jr	., Member
	Sharon Block,	Member
(SEAL)	NATIONAL LABOR RELATIO	NS BOARD